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HOWARD & HOWARD

ATTORNEYS
Established 1869

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The Pinchurst Office Center
Suite 101
1400 North Woodward Avenue
Bloomfield Hills, MI 48304-2856

Telephone (810) 645-1483
Fax (810) 645-1568

The Kalamazoo Building
Suite 400
107 West Michigan Avenue
Kalamazoo, MI 49007-5956

Telephone (616) 582-1483
Fax (616) 582-1568

The Phoenix Building
Suite 500
222 Washington Square, North
Lansing, MI 48933-1817

Telephone (517) 485-1483
Fax (517) 485-1568

The Olive Court Building
Suite 400
521 Liberty Street
Pearl River, IL 61602-1403

Telephone (815) 672-1483
Fax (815) 672-1568

Federal Communications Commission
Office of General Counsel

201 East Kennedy Boulevard
Tampa, FL 33602-5829

Telephone (813) 229-1483
Fax (813) 229-1568

Eric E. Breisach

Kalamazoo Office

Direct Dial: (616) 382-9711

May 12, 1997

Via Hand Deliver

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Re: Comments of the Small Cable Business Association re Amendment of Rules
and Policies Governing Pole Attachments; Comments of the Initial Regulatory
Flexibility Analysis; CS Docket No. 97-98

Dear Mr. Caton:

We enclose for filing an original and 6 copies of the Comments of the Small Cable
Business Association in the above-referenced matters.

Very truly yours,

Howard & Howard



Eric E. Breisach

EEB:cm
Enclosures

cc: Meredith Jones, Chief Cable Services Bureau
William Johnson, Deputy Bureau Chief
John Logan, Deputy Bureau Chief
Reed E. Hundt, Chairman
James Quello, Commissioner
Susan Ness, Commissioner
Rachelle Chong, Commissioner
Matthew M. Polka, Esq.

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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MAY 12 1997

Federal Communications Commission
Office of Secretary

In the Matter of

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**Amendment of Rules and
Policies Governing
Pole Attachments**

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CS Docket No. 97-98

**COMMENTS
OF THE
SMALL CABLE BUSINESS ASSOCIATION**

**Eric E. Breisach
Christopher C. Cinnamon
Kim D. Crooks
Howard & Howard Attorneys, P.C.
The Kalamazoo Building, Suite 400
107 West Michigan Avenue
Kalamazoo, Michigan 49007-3956
(616) 382-9711**

**Attorneys for the
Small Cable Business Association**

May 12, 1997

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Rules and)	CS Docket No. 97-98
Policies Governing)	
Pole Attachments)	

**COMMENTS
OF THE
SMALL CABLE BUSINESS ASSOCIATION**

The Small Cable Business Association ("SCBA") files these *Comments* to the *Notice of Proposed Rulemaking*, CS Docket No. 97-98 (released March 14, 1997) ("*Notice*").

Formed nearly four years ago, SCBA today represents almost 300 small cable operators, most of whom have 1,000 or fewer subscribers. SCBA began as small operators banded together to cope with regulatory burdens imposed by the Cable Television Consumer Protection and Competition Act of 1992 ("*1992 Cable Act*"). Today, SCBA remains active in many Commission rulemakings, ensuring that the Commission understands the unique impact its regulations have on small cable and customers of small cable.

SCBA responds to paragraph 48 of the *Notice* and, in separately filed comments, the Commission's *Initial Regulatory Flexibility Act Analysis*. Although the Commission states that it "seeks to further minimize burdens of small entities in conformance with the *1996 Act*,"¹ it ignores the certain negative impact of § 224 on small cable systems.

In paragraph 48 of the *Notice*, the Commission first repeats the § 257 requirement for the elimination of "market entry barriers for entrepreneurs and other small businesses

¹ *Notice*, ¶ 78.

in the provision and ownership of telecommunications services and information services" and then states:

We believe that market entry barriers are minimized for small cable operators and telecommunications carriers by the application of § 224 which requires just, reasonable and nondiscriminatory rates.

Section 224 does not minimize market entry barriers for small cable. To the contrary, § 224(a) contains a critical exclusion from its coverage that directly and severely affects small cable. Section 224(a) extends its protections to all "utilities," which terms excludes "any person who is cooperatively organized. . . ."² The statute's exclusion of cooperatives from coverage adversely impacts small cable systems.

Because many small cable systems operate in rural areas, where aerial plant predominates, access to utility poles represents an essential element of providing cable service. Inability to access poles on economically feasible terms represents a significant barrier to entry. Small cable routinely attaches its cable plant to poles owned by rural telephone and electric cooperatives. The terms and conditions imposed by rural cooperatives are exempt from federal oversight³ and are not generally regulated by state utility commissions.

In previously filed *Comments*, SCBA alerted the Commission to this serious market entry barrier.⁴

² 47 U.S.C. § 224(a)(1).

³ 47 U.S.C. § 224(a)(1).

⁴ In the Matter of § 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, GN Docket No. 96-113, *Comments of the Small Cable Business Association* ("SCBA Section 257 Comments") (July 24, 1996), pp. 21-22.

Some of SCBA members have incurred double and triple digit percentage increases in pole attachment costs at the same time the pole owners market DBS services to their members. Some cooperatives have raised rates in excess of 1,000 percent and openly admit their intent to give their DBS services a price advantage. Such predacious pricing of an essential element for small cable constitutes a significant impediment to retaining existing market pressure presence and expanding service into new areas.⁵

The *Notice* ignores the § 224(a)(1) exemption for rural cooperatives, an exemption which dramatically impacts small cable systems. The § 224 exemption has much less of an impact upon other telecommunications providers. Small cable provides service in rural areas frequently served by cooperatively organized utilities. Consequently, small cable suffers as a result of the blanket exclusion of cooperatively organized utilities from the protections allowed other cable and telecommunications providers by § 224.

Section 257 mandates the elimination of market entry barriers for small businesses providing telecommunications and information services. The Commission's observation in paragraph 48 of the *Notice* is inaccurate.

Section 224 does not minimize small cable's market entry barriers. Rather, small cable and its subscribers unfairly bear the burden of the § 224 cooperative utility exclusion. SCBA requests that the Commission thoroughly consider the market entry barrier created by § 224, report the need for legislative change to Congress, and issue a comprehensive final regulatory flexibility analysis in connection with the *Notice*.

⁵ SCBA Section 257 Comments, p. 22.

Respectfully submitted:



Eric E. Breisach
Christopher C. Cinnamon
Kim D. Crooks

Howard & Howard Attorneys, P.C.
The Kalamazoo Building, Suite 400
107 West Michigan Avenue
Kalamazoo, Michigan 49007-3956
(616) 382-9711

Attorneys for the
Small Cable Business Association